* THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

* THE HON'BLE SRI JUSTICE P.S NARAYANA

+W.P.No.19690 of 2004

% 09/03/2005

1 The Government of Andhra Pradesh, represented by its Principal Secretary, Home Department, Secretariat, Hyderabad.
2 Addl. Director General of Police, Administration, A.P.Hyderabad.
3 Deputy Inspector General of Police, Hyderabad Range, Hyderabad.
4 Superintendent of Police, Nalgonda District.

..... PETITIONERS

Vs

Sri Mohd. Taher Ali, Ex.Pc.P.C.-1423, Nalgonda District.

Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioners : G.P. for Services-I.

^ Counsel for respondent: Mr.A.Hanumantha Reddy

?CASES REFERRED :

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19690 of 2004

Between:

1 The Government of Andhra Pradesh, represented by its Principal Secretary, Home Department, Secretariat, Hyderabad.
2 Addl. Director General of Police, Administration, A.P.Hyderabad.
3 Deputy Inspector General of Police, Hyderabad Range, Hyderabad.
4 Superintendent of Police, Nalgonda District.

..... PETITIONERS

AND

Sri Mohd. Taher Ali, Ex.Pc.P.C.-1423, Nalgonda District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction more particularly one in the nature of "writ of Certiorari" calling for the records connected with order dated 02-12-2003 in O.A.NO.467 of 2003 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and to quash the same as erroneous and contrary to law.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent: MR.A.HANUMANTHA REDDY

The Court made the following:

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ORAL ORDER: (per PSN.J.)

The writ petitioners are Government of Andhra Pradesh and others. They filed the present Writ Petition for issuance of a Writ of Certiorari calling for the records connected with order dated 2.12.2003 in O.A.No.467 of 2003 on the file of Andhra Pradesh Administrative Tribunal (in short referred to as the Tribunal hereinafter) and pass such other suitable orders.

2. The learned Government Pleader for Services-I representing the writ petitioners would contend that though opportunity had been given, no explanation was forthcoming from the respondent and hence it cannot be said that no reasonable opportunity was given to the respondent-applicant in the OA. The learned counsel also would maintain that as far as the quantum of punishment is concerned, it is within the purview of the disciplinary authority and hence interfering with the order

on the ground that it is shockingly disproportionate cannot be sustained in the facts and circumstances of the case.

3. Per contra, Sri A.Hanumantha Reddy representing the respondent-applicant had submitted that since the respondent-applicant had expected some minor punishment, he had not submitted any explanation and believing the same he kept quiet, but ultimately to his surprise the order which had been impugned in the OA., had been made. The learned counsel also would submit that at any rate in the light of the clear findings which had been recorded by the Tribunal, no interference is called for by this Court under Article 226 of the Constitution of India.

4. Heard both the learned counsel.

5. The respondent-applicant was Ex-P.C.1423. While he was working at Halya PS, Nalgonda District, he was handed upon a charge involving departmental enquiry for the delinquencies that on 1.9.1999 he was passported to Kadapa District for Election Bandobust duty along with other PS men with instructions to report before SDPO., Miryalaguda, but he did not report for duty on 2.9.1999 along with other men and absented himself unauthorisedly without leave or permission with effect from 2.9.1999 and committed misconduct of desertion. It is stated that PC was acknowledged the article of charge on 13.11.1999, but he had not submitted any written representation even after the expiry of the stipulated time. The Circle Inspector of Police, Miryalaguda was appointed as Enquiry Officer to conduct departmental enquiry against him and the same as conducted and submitted Minute on holding that the desertion charge was proved. In view of the same a show cause notice dated 3.10.2000 was served on the aforesaid Ex.P.C. and the same was served on the respondent-applicant on 7.10.2000 to submit his written representation, but he did not submit his final explanation despite giving reasonable opportunity in this regard. Even after completion of the stipulated period inasmuch as the respondent had not submitted any explanation, the disciplinary authority passed an order awarding him the punishment of compulsory retirement from service, vide proceedings in C.No.45/OE/1999 (D.O.No.138/01), dated 10.1.2001. Aggrieved by the same, the respondent-applicant preferred an appeal to the Deputy Inspector General of Police, Hyderabad Range, Hyderabad and the same was rejected vide proceedings C.No.553/2001 (Rc.No.1174/App-56/2001/HR), dated 18.10.2001. Aggrieved by the same, the respondent herein filed a Revision before the Additional Director General of Police (Administration), Andhra Pradesh,

Hyderabad and the same was rejected vide proceedings T.Dis.No.975/T1/2001, dated 2.2.2002. The respondent also filed a Mercy Petition to the Principal Secretary to Government, Home Department, Government of Andhra Pradesh, Hyderabad, and the same was also rejected vide Government Memo No.22042/Ser-2/A2/2002-2, dated 18.10.2002. After exhausting all the aforesaid remedies, the respondent-applicant filed O.A.No.467 of 2003 on the file of the Tribunal, and the Tribunal disposed of the OA setting aside the orders aforesaid. Aggrieved by the same, the writ petitioners had preferred the present Writ Petition.

6. In the order impugned the Tribunal, after recording the findings, ultimately made the following order:

> "Under the circumstances, the order of the 4th respondent dated 10.1.2001 and the orders of the 1st, 2nd and 3rd respondents confirming the orders of the 4th respondent are hereby set aside. The 4th respondent is directed to reconsider the penalty imposed against the applicant in accordance with law. This exercise shall be completed within two months from the date of receipt of a copy of this order. The OA is disposed of accordingly. There will be no order as to costs".

7. The twin grounds of which the Tribunal thought it fit to make the order aforesaid are that in the facts and circumstances reasonable opportunity had not been given and further at any rate the penalty of imposition of compulsory retirement is shockingly disproportionate to the charge with which the respondent-applicant had been charged with.

9. It is no doubt true that in view of the limitations imposed on these Courts, normally the penalties, which had been imposed by the disciplinary authorities, need not be substituted while exercising the power of judicial review. But, however, the settled principle is that if the Court, while exercising the power of judicial review under Article 226 of the Constitution of India, is satisfied that the punishment imposed is disproportionate, then within the limits specified in exercise of the jurisdiction of judicial review, the Courts can definitely interfere. Exactly this is the area where the discretion had been exercised by the learned Tribunal and ultimately arrived at the conclusion that it is a fit case where the penalty imposed may have to be reconsidered. In the light of the reasons, which had been recorded in detail and also several of the decisions which had been referred to by the Tribunal in arriving at the said conclusion in paragraphs 5, 6 and 7, this Court is of the considered opinion that

this is not a fit case to interfere with the order of the Tribunal and accordingly the said order is hereby confirmed.

10. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

(G.BIKSHAPATHY, J.)

9th March, 2005.

SSR (P.S.NARAYANA, J.)

LR COPY TO BE MARKED.

One Fair copy to the Hon"ble Mr.Justice G.Bikshapathy (for His Lordship's kind perusal).

One Fair copy to the Hon'ble Mr.Justice P.S.Narayana (for His Lordship's kind perusal).

To

1 The Principal Secretary, Home Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
2 Additional Director General of Police, Administration, A.P.Hyderabad.
3 Deputy Inspector General of Police, Hyderabad Range, Hyderabad.
4 Superintendent of Police, Nalgonda District.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad,

6 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad (OUT)

7 2 CD copies.

8 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

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